

**Office of the Attorney General Pam Bondi**

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From: Joslyn Wilson, Director  
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Subject: Law enforcement access to the Prescription Drug Monitoring Program  
(PDMP) database

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The attached briefing paper seeks to clarify the ability of law enforcement officers to access information from Florida's PDMP database. Bottom Line: a law enforcement officer may only obtain PDMP reports through the PDMP manager.

The questions addressed are whether section 893.07(4)(b), Florida Statutes, authorizes a law enforcement officer (LEO) to obtain prescription drug monitoring program database reports from a pharmacist or whether law enforcement's access to PDMP reports are controlled by sections 893.055 and 893.0551, Florida Statutes.

As discussed in the briefing paper, section 893.07(4)(b), Florida Statutes, relates only to records created by pharmacies to track *their own* dispensing information and does not provide authority for LEO access to PDMP reports. Rather LEO access to PDMP reports is strictly regulated in sections 893.055 and 893.0551, Florida Statutes, which clearly delineate the circumstances under which law enforcement may access information from the PDMP database and do not include access through a pharmacist.

**Question: Does section 893.07(4)(b), Florida Statutes, authorize a law enforcement officer (LEO) to obtain prescription drug monitoring program (PDMP) database reports from a pharmacist or is law enforcement's access to PDMP reports controlled by sections 893.055 and 893.0551, Florida Statutes?**

**Answer:** Section 893.07(4)(b), Florida Statutes, relates only to records created by pharmacies to track *their own* dispensing information and does not provide authority for LEO access to PDMP reports. Rather LEO access to PDMP reports is strictly regulated in sections 893.055 and 893.0551, Florida Statutes, which set out a detailed process under which the Department of Health (DOH) – not pharmacies – may disclose PDMP records to LEOs. To read section 893.07(4), Florida Statutes, as granting law enforcement access to the PDMP database through a pharmacist would defeat the statutory scheme set forth in sections 893.055 and 893.0551. Thus, an LEO may only obtain PDMP reports through the PDMP manager.

**Background:** Section 893.055, Florida Statutes, provides for the establishment by DOH of the PDMP, a comprehensive electronic database system. This system contains information about controlled substance prescriptions and provides prescription information to a patient's health care practitioner and pharmacist who request a patient advisory report from DOH.<sup>1</sup> Pharmacies dispensing the controlled substance and prescribers who directly dispense a controlled substance are required to submit certain information to the department for inclusion in the database.

**Analysis:** Section 893.07, Florida Statutes, requires any person who dispenses controlled substances to make and maintain records, including prescription records, relating to his or her receipt and disposition of the controlled substances. Subsection (4) provides that "every . . . record required by this chapter" shall be kept and made available for at least 2 years for inspection and copying by LEOs. An LEO is not required to obtain a subpoena, court order, or search warrant in order to obtain access to or copies of such records.

Section 893.07(4), Florida Statutes, refers to a "record required by [Chapter 893]." While a pharmacist is required to create a record of the controlled substances he or she dispenses,<sup>2</sup> there is no requirement that the pharmacist check the PDMP database in dispensing a controlled substance. Therefore the patient advisory report received by a pharmacist who *requested* the report from DOH would not appear to be a record *required* by Chapter 893. Accordingly, section 893.07(4) by its terms does not provide authorization for an LEO to access information obtained by a pharmacist from the PDMP database. Section 893.07(4)(b), Florida Statutes, relates only to records created by pharmacies to track *their own* dispensing information and does not provide authority for LEO access to PDMP reports.

Instead LEO access to PDMP reports is strictly regulated in sections 893.055 and 893.0551, Florida Statutes, which set out a detailed process under which DOH –

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<sup>1</sup> Section 893.055(2)(a), Fla. Stat.

<sup>2</sup> See, e.g., s. 893.07, Fla. Stat.

not pharmacies – may disclose PDMP records to LEOs. As the more specific expression of the Legislature's intent, these statutes relating to PDMP database records would control over more general provisions relating to pharmacy records.<sup>3</sup> Section 893.055(7)(c), Florida Statutes, specifically governs access by LEOs and provides in part:

The following entities shall not be allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information that is confidential and exempt under s. 893.0551. Prior to release, the request shall be verified as authentic and authorized with the requesting organization by the program manager, the program manager's program and support staff, or as determined in rules by the department as being authentic and as having been authorized by the requesting entity:

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3. A law enforcement agency during active investigations regarding potential criminal activity, fraud, or theft regarding prescribed controlled substances.

In addition, section 893.0551(3), Florida Statutes, provides that DOH shall disclose such confidential and exempt information, after verifying the legitimacy of a request to, among others, a law enforcement agency that has initiated an active investigation involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances. As provided in the statute, a law enforcement agency may request information from the department but "*may not have direct access to its database.*"<sup>4</sup> (e.s.)

While a pharmacy, prescriber, or dispenser may have access to the PDMP database "for the purpose of reviewing the patient's controlled substance prescription history,"<sup>5</sup> section 893.055(7)(b), Florida Statutes, provides that "[c]onfidential and

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<sup>3</sup> See generally *McKendry v. State*, 641 So. 2d 45 (Fla. 1994) (specific statute covering a particular subject area will control over a statute covering the same and other subjects in more general terms); *Gretz v. Florida Unemployment Appeals Commission*, 572 So. 2d 1384 (Fla. 1991).

<sup>4</sup> Section 893.0551(3)(c), Fla. Stat.

<sup>5</sup> Section 893.055(7)(b), Fla. Stat. The statute limits other access to the PDMP database to the program manager and to the designated program and support staff, who may act only at the direction of the program manager or, in the absence of the program manager, as authorized. Access by the program manager or such designated staff is for prescription drug program management only or for management of the program's database and its system in support of the requirements of this section and in furtherance of the prescription drug monitoring program. *And see* s. 893.0551(3)(e), Fla. Stat., stating that DOH shall disclose such confidential and exempt information to "[a] pharmacist who certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with ss. 893.04 and 893.055." See also s. 893.0551(3)(g), Fla. Stat., permitting such information to be released to a pharmacy certifying that the information is necessary to provide medical treatment to a current patient in accordance with s. 893.055.

exempt information in the database shall be released *only as provided in paragraph (c) and s. 893.0551. . . .*" (e.s.) Sections 893.055(7)(c), as discussed above, permits an LEO to request access from the program manager in direct relation to active investigations regarding potential criminal activity, fraud, or theft regarding prescribed controlled substances.

Thus, section 893.055, Florida Statutes, does not provide authorization for a pharmacy to access the PDMP database for purposes of providing information to law enforcement. To read the statutes in a manner which would allow an LEO access to the PDMP database through a pharmacist would be contrary to the clear intent of the statute.<sup>6</sup> Finally I would note that section 893.0551, Florida Statutes, requires that "[a]ny agency or person who obtains such confidential and exempt information pursuant to this section *must maintain the confidential and exempt status of that information.*"<sup>7</sup> (e.s.) Any person who willfully and knowingly violates the statute commits a felony of the third degree.<sup>8</sup> Nothing in sections 893.07, 893.055 or 893.0551, Florida Statutes, provides authorization for a pharmacy or pharmacist to disclose confidential and exemption information obtained from the PDMP database to an LEO.

Accordingly, section 893.07(4)(b), Florida Statutes, relates only to records created by pharmacies to track *their own* dispensing information and does not provide authority for LEO access to PDMP reports. Rather LEO access to PDMP reports is strictly regulated in sections 893.055 and 893.0551, Florida Statutes, which set out a detailed process under which the DOH – not pharmacies – may disclose PDMP records to LEOs.

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<sup>6</sup> Sections 893.055 and 893.0551, Fla. Stat., restrict access by a pharmacy or pharmacist to reviewing the controlled substance prescription history for the purpose of dispensing a controlled substance or providing medical treatment to a current patient, thus prohibiting a pharmacist from directly accessing the PDMP database on behalf of an LEO.

<sup>7</sup> Section 893.0551(5), Fla. Stat.

<sup>8</sup> Section 893.0551(6), Fla. Stat.